

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

Francisco Arcibal,

Case No. 2:23-cv-00630-CDS-BNW

Plaintiff,

## SCREENING ORDER

V.

Natasha Koch, *et al.*,

## Defendants.

10 Plaintiff Francisco Arcibal brings this civil-rights case under 42 U.S.C. § 1983. Plaintiff  
11 moves to proceed *in forma pauperis*. ECF No. 1. He submitted the declaration required by 28  
12 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. *Id.* His  
13 request to proceed *in forma pauperis* will, therefore, be granted.

14 The Court now screens Plaintiff's complaint (ECF No. 1-1) as required by 28 U.S.C. §§  
15 1915(e)(2) and 1915A.

## I. Analysis

## A. Screening Standard

18       Federal courts must conduct a preliminary screening in any case in which a prisoner seeks  
19 redress from a governmental entity or officer or employee of a governmental entity. *See* 28  
20 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any  
21 claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
22 monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),  
23 (2). In addition to the screening requirements under § 1915A, the Prison Litigation Reform Act  
24 requires a federal court to dismiss a prisoner’s claim if it “fails to state a claim on which relief  
25 may be granted.” 28 U.S.C. § 1915(e)(2); *accord* Fed. R. Civ. Proc. 12(b)(6).

Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient

1 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*  
 2 *Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted). The court  
 3 liberally construes *pro se* complaints and may only dismiss them “if it appears beyond doubt that  
 4 the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”  
 5 *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 678).

6 In considering whether the complaint states a claim, all allegations of material fact are  
 7 taken as true and construed in the light most favorable to the plaintiff. *Wyler Summit P’ship v.*  
 8 *Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the  
 9 standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide  
 10 more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555  
 11 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.* But unless it  
 12 is clear the complaint’s deficiencies could not be cured through amendment, a *pro se* plaintiff  
 13 should be given leave to amend the complaint with notice regarding the complaint’s deficiencies.  
 14 *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

15 **B. Screening the Complaint**

16 Here, Plaintiff alleges that there are two different versions of his pre-Sentence  
 17 Investigation Report. According to Plaintiff, the Report the court relied on to impose sentence  
 18 contained slanderous comments and did not contain the state’s seal.

19 Plaintiff asserts claims under the Fifth, Sixth, Eighth, and Fourteenth Amendment—all  
 20 based on the above facts. He names the following individuals as Defendants: (1) Parole and  
 21 Probation Chief Natasha Koch, (2) Parole and Probation “Lieutenant” D. McDaniel, (3) Parole  
 22 and Probation Supervisor Patricia Houlihan, and (4) Parole and Probation Supervisor N.  
 23 Antonucci.

24 “In order to recover damages under section 1983 for an allegedly unconstitutional  
 25 conviction or for other harm caused by actions the unlawfulness of which would render a  
 26 conviction or sentence invalid, a plaintiff must prove that the conviction has been invalidated.”  
 27 *Trimble v. City of Santa Rose*, 49 F.3d 583, 585 (9th Cir. 2004). Here, a judgment in Plaintiff’s  
 28 favor (finding that the information provided by Parole and Probation was false) would necessarily

1 imply the invalidity of his conviction or sentence. However, Plaintiff has not pled whether his  
 2 conviction or sentence has been reversed or otherwise invalidated. As such, the Court cannot tell  
 3 if his constitutional claims have accrued yet or are barred under *Heck v. Humphrey*, 512 U.S. 477  
 4 (1994).<sup>1</sup>

5 If Plaintiff's conviction or sentence has not yet been reversed or invalidated, his  
 6 constitutional claims must be brought pursuant to a writ of habeas corpus under 28 U.S.C. § 2254.  
 7 *Milewski v. Kohn*, No. 319CV00095MMDWGC, 2019 WL 1117909, at \*2 (D. Nev. Mar. 11,  
 8 2019).

9 If Plaintiff wishes to pursue his claims, he must either (1) file an amended complaint by  
 10 June 1, 2023, alleging that his underlying conviction or sentence has been invalidated or reversed,  
 11 or (2) file a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. *See White v.*  
 12 *Lambert*, 370 F.3d 1002, 1006 (9th Cir. 2004), overruled on other grounds by *Hayward v.*  
 13 *Marshall*, 603 F.3d 880, 886 (9th Cir. 2004) (en banc). Section 2254 (b)–(d) outlines the various  
 14 requirements an individual must exhaust before filing such a petition.

15 **C. Amendment**

16 If Plaintiff chooses to file an amended complaint, he is advised that the original complaint  
 17 (ECF No. 1-1) will no longer serve any function in this case. The amended complaint must be  
 18 complete in and of itself without reference to prior pleadings or to other documents.

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23 <sup>1</sup> If the underlying sentence has not been invalidated, *Heck* bars civil suits based on improper presentencing reports.  
 24 *See, e.g., Jamison v. Lenawee Cty. Probation Dep't*, No. 2:14-CV-13995, 2014 WL 6810409, at \*2 (E.D. Mich. Dec.  
 25 2, 2014) ("Plaintiff's complaint challenges his present incarceration. He argues that he was sentenced based upon  
 26 information improperly included in a presentence investigation report. The complaint necessarily challenges the  
 27 validity of Plaintiff's sentence. . . . Because Plaintiff has not achieved a favorable termination of his criminal case,  
 28 this complaint is barred by *Heck*."); *Brady v. Baldwin*, No. 17-cv-1203-NJR, 2018 WL 3496499, at \*2 (S.D. Ill. June  
 20, 2018) ("In this case, Plaintiff argues he was unfairly sentenced based on an incomplete PSI. The PSI was  
 allegedly incomplete because certain officials failed to release Plaintiff's mental health records, and Plaintiff is  
 attempting to bring constitutional claims against those officials. Given this backdrop, a judgment in Plaintiff's favor  
 would necessarily imply the invalidity of his sentence, which has not been invalidated in a prior proceeding."  
 (collecting cases)).

1       **II. Conclusion**

2       **IT IS THEREFORE ORDERED** that Plaintiff Francisco Arcibal's application for leave  
3 to proceed *in forma pauperis* (ECF No. 1) is **GRANTED**. Plaintiff is permitted to maintain this  
4 action to conclusion without prepaying fees or costs or giving security for them.

5       **IT IS FURTHER ORDERED** that the Clerk of Court must detach and file Plaintiff's  
6 complaint (ECF No. 1-1).

7       **IT IS FURTHER ORDERED** that Plaintiff's complaint (ECF No. 1-1) is DISMISSED  
8 without prejudice.

9       **IT IS FURTHER ORDERED** that if Plaintiff chooses to file an amended complaint, he  
10 must do so by June 1, 2023. In his amended complaint, **he must state whether his underlying**  
11 **conviction or sentence has been reversed or invalidated**. Failure to file an amended complaint  
12 in accordance with this Order will result in a recommendation that this case be dismissed.

13       **IT IS FURTHER ORDERED** that the Clerk of the Court shall send Plaintiff copies of an  
14 *in forma pauperis* application for a prisoner, instructions for the same, a blank 28 U.S.C. § 2254  
15 habeas corpus form, and instructions for the same.

16       **IT IS FURTHER ORDERED** that if Plaintiff chooses to file a habeas corpus petition and  
17 an *in forma pauperis* application, he must do so in a new case.

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19       DATED: May 1, 2023.

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BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE

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